



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 13 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Marquis, President
Marquis Energy, LLC
11953 Esk Road
Hennepin, Illinois 61327

Dear Mr. Marquis:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolved Marquis Energy, LLC, docket number CAA-05-2013-0016. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 13 2013.

Pursuant to paragraph 38 of the CAFO, Marquis Energy, LLC must pay the civil penalty within 30 days of May 3, 2013. Your electronic funds transfer must display the case name Marquis Energy, LLC and the docket number CAA-05-2013-0016.

Please direct any questions regarding this case to Cynthia King at 312-886-6837.

Sincerely,

Sara Breneman

Sara J. Breneman
Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Cynthia King/C-14J
Ray Pilapil/Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2013-0016
)	
Marquis Energy, LLC)	Proceeding to Assess a Civil Penalty
Hennepin, Illinois,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Marquis Energy, LLC (Marquis Energy or Respondent), a limited liability company doing business in Illinois.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

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2013 APR -3 PM 3:11

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 111(b) of the Act, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of sources, which, in EPA's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and to promulgate standards of performance for new stationary sources within these categories. These standards are known as "new source performance standards" or "NSPS."

10. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the owner or operator of any new source from operating such source in violation of any standard of performance applicable to such source.

11. Under Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or if earlier, proposed regulations) prescribing a standard of performance which will be applicable to such source.

12. Under Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

13. Under Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA promulgates NSPS for categories of sources and codifies those requirements at 40 C.F.R. Part 60.

14. 40 C.F.R. Part 60, Subpart A contains general provisions applicable to the owner or operator of any stationary source which contains an affected facility subject to NSPS. These general provisions include definitions at 40 C.F.R. § 60.2 and monitoring requirements at 40 C.F.R. § 60.13.

15. Under 40 C.F.R. § 60.2, an “affected facility” means any apparatus subject to a performance standard under the NSPS regulations.

16. The NSPS, at 40 C.F.R. § 60.13(e), provides that all continuous monitoring systems shall be in continuous operation and shall meet certain minimum frequency of operation requirements, except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under 40 C.F.R. § 60.13(d).

17. Continuous emission monitoring system (CEMS), as defined at 40 C.F.R. § 60.51b, means a monitoring system for continuously measuring the emissions of a pollutant from a facility.

18. The NSPS for Industrial-Commercial-Institutional Steam Generating Units (ICI SGU) is codified at 40 C.F.R. Part 60, Subpart Db. The ICI SGU provides at 40 C.F.R. § 60.48b(b), that the owner or operator of an affected facility subject to a nitrogen oxides (NO_x) standard shall comply with either 40 C.F.R. § 60.48b(b)(1) or (b)(2).

19. The NSPS for ICI SGU, at 40 C.F.R. § 60.48b(b)(1), provides that the owner or operator subject to a NO_x standard shall install, calibrate, maintain, and operate CEMS for measuring NO_x and oxygen (O₂) (or carbon dioxide (CO₂)) emissions discharged to the atmosphere, and shall record the output of the system.

20. The NSPS for ICI SGU, at 40 C.F.R. § 60.48b(c), provides that the CEMS required by 40 C.F.R. § 60.48b(b) shall be operated and data recorded during all periods of

operation of the affected facility except for CEMS breakdowns and repairs. Data must be recorded during calibration checks, and zero and span adjustments.

21. EPA promulgated interim approval of the Illinois Title V program on March 7, 1995, 60 Fed. Reg. 12478. EPA promulgated full approval of the Illinois Title V program on November 30, 2001 and it became effective on that date, 66 Fed. Reg. 62946 (December 4, 2001).

22. The Illinois regulations governing the Title V permitting program are codified at 415 Illinois Compiled Statutes (ILCS) 5/39.5, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

23. 415 ILCS 5/39.5.7.a supports the requirement at 40 C.F.R. § 70.1(b) that “[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”

24. 415 ILCS 5/39.5.6.b supports the requirement at 40 C.F.R. § 70.7(b) that no source subject to 40 C.F.R. Part 70 requirements may operate without a Title V permit as specified in the CAA.

25. 415 ILCS 5/39.5.5, 39.5.6, and 39.5.7 support the requirements at 40 C.F.R. § 70.5(a) and (c) to submit timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content.

26. 415 ILCS 39.5.5.i supports the requirement at 40 C.F.R. § 70.5(b) that “[a]ny applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.”

27. Permit Number 06020041 (Hennepin Permit) was issued to Marquis Energy on March 21, 2012 by the Illinois Environmental Protection Agency.

28. Condition 2.1.6.a of the Hennepin Permit requires Marquis Energy to maintain an individual 1.35 pounds per hour (lbs/hr) of volatile organic matter (VOM) emission limit and an individual limit of 5.90 tons per year (tpy) of VOM emission limit from the facility's two natural gas fired boilers.

29. Condition 2.6.6.b of the Hennepin Permit requires Marquis Energy to maintain an emission limit of 1.41 lbs/hr of particulate matter (PM) from each of the facility's natural gas fired regenerative thermal oxidizers (oxidizers). The Hennepin Permit also requires Marquis Energy to maintain a 12.33 tpy PM combined emission limit for all of the facility's oxidizers. Both of the facility's oxidizers vent out of a common stack.

30. Condition 2.3.9.d of the Hennepin Permit requires Marquis Energy to maintain records of the differential pressure of each baghouse, recorded at least once per operating day.

31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

32. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

34. The Marquis Energy facility is located at 11953 Prairie Industrial Parkway Road, Hennepin, Illinois (the facility).

35. On multiple occasions in 2009 and 2010, Marquis Energy failed to operate CEMS for Boilers #1 and #2 during all periods of operation except for breakdowns and repairs, in violation of 40 C.F.R. §§ 60.48b(c) and 60.13(e), and Section 111 of the Act, 42 U.S.C. § 7411.

36. On August 13, 2008, Marquis Energy's east boiler stack was tested for VOM emissions. The test results for the VOM test demonstrate that the stack for the east boiler emitted VOM at a rate of 2.24 lbs/hr and 9.77 tpy. Condition 2.1.6.a of the Hennepin Permit sets an emission limit of 1.35 lbs/hr of VOM and 5.90 tpy of VOM emissions. This constitutes a violation of the permit, the Illinois SIP, and Sections 110 and 502 of the CAA, 42 U.S.C. §§ 7410 and 7661a. The unit tested in compliance on May 7, 2012.

37. On multiple occasions from May 2008 to June 2011, Marquis Energy failed to record the pressure drop across the baghouses. This constitutes a violation of the permit, the Illinois SIP, and Sections 110 and 502 of the CAA, 42 U.S.C. §§ 7410 and 7661a.

Civil Penalty

38. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, prompt return to compliance, agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$34,078.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$34,078 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

40. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Cynthia King (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

44. Marquis Energy must complete a SEP designed to protect the environment by reducing the amount of CO₂ being released into the atmosphere from the facility's scrubber.

45. At the facility, Marquis Energy must complete the SEP as follows:

- a. A contract with Pentair, Ltd. must be executed by March 31, 2013.
- b. All engineering, structural steel, enclosures, piping, valves, control equipment, and associated infrastructure must be acquired, installed, and operational by October 31, 2013.
- c. Until the scrubber is installed and operational, Marquis Energy must submit quarterly progress reports to EPA, at the compliance tracker address listed in paragraph 40 above. Progress reports should include a detailed summary of the status of the scrubber installation and operation project.

46. Respondent must spend at least \$1,650,000 to purchase and install necessary equipment and \$638,000 to operate the equipment annually for 5 years.

47. Respondent must continuously use or operate the scrubber equipment installed as the SEP for at least 5 years following its installation, except during maintenance activities, operational issues and startup, shutdown and malfunction events, during which the facility will operate using the backup scrubber.

48. Respondent certifies as follows:

I certify that Marquis Energy is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Marquis Energy has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Marquis Energy is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

49. EPA may inspect the facility at any time to monitor Marquis Energy's compliance with this CAFO's SEP requirements.

50. Marquis Energy must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to this CAFO. Marquis Energy must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

51. Marquis Energy must submit a SEP completion report to EPA by December 31, 2013. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Marquis Energy has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

52. Marquis Energy must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 40, above.

53. In each report that Marquis Energy submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

54. Following receipt of the SEP completion report described in paragraph 51, above, EPA must notify Marquis Energy in writing that:

- a. It has satisfactorily completed the SEP and the SEP report; or
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies.

55. If EPA exercises option b above, Marquis Energy may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Marquis Energy's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Marquis Energy a written decision on its objection. Marquis Energy will comply with any requirement that EPA imposes in its decision.

56. If Marquis Energy violates any requirement of this CAFO relating to the SEP, Marquis Energy must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Marquis Energy did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 45, Respondent must pay a penalty of \$102,233.
- b. If Marquis Energy did not complete the SEP satisfactorily, but EPA determines that Marquis Energy made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the installation amount set forth in paragraph 46, Marquis Energy will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Marquis Energy completed the SEP satisfactorily, but spent less than 90 percent of the installation amount set forth in paragraph 46, Marquis Energy must pay a penalty of the difference, if any, between the amount spent and \$102,233.

57. EPA's determinations of whether Marquis Energy completed the SEP satisfactorily and whether Marquis Energy made good faith and timely efforts to complete the SEP will bind Marquis Energy.

58. Marquis Energy must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Marquis Energy will use the method of payment specified in paragraph 39, above, and will pay interest and nonpayment penalties on any overdue amounts.

59. Any public statement that Respondent makes referring to the SEP must include the following language: “Marquis Energy, LLC undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Marquis Energy, LLC for violations of the Clean Air Act.”

60. For federal income tax purposes, Marquis Energy will neither capitalize into inventory or basis, nor deduct \$127,791.25 of the costs or expenditures incurred in performing the SEP, which is the credit given to the SEP by EPA in this matter.

General Provisions

61. This CAFO resolves only Marquis Energy’s liability for federal civil penalties for the violations alleged in this CAFO.

62. The effect of the settlement described in paragraph 61, above, is conditioned upon the accuracy of Marquis Energy’s representations to EPA.

63. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

64. This CAFO does not affect Marquis Energy’s responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

65. Marquis Energy certifies that it is complying fully with the Clean Air Act.

66. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

67. The terms of this CAFO bind Marquis Energy, its successors and assigns.

68. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
69. Each party agrees to bear its own costs and attorneys fees in this action.
70. This CAFO constitutes the entire agreement between the parties.
71. This CAFO is effective on the date that the Final Order is filed with the Regional Hearing Clerk.

Marquis Energy, LLC, Respondent

3/25/13
Date

Mark Marquis
Mark Marquis, President
Marquis Energy, LLC

United States Environmental Protection Agency, Complainant

3/28/13
Date

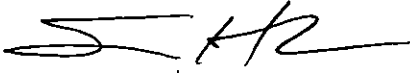
George T. Czerniak Jr.
George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Marquis Energy, LLC
Docket No. CAA-05-2013-0016

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-1-13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Marquis Energy, LLC
Docket No. CAA-05-2013-0016

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Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number ~~CAA-05-2013-0016~~ with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604 and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Mark Marquis
President
Marquis Energy
11953 Prairie Industrial Parkway
Hennepin, Illinois 61327

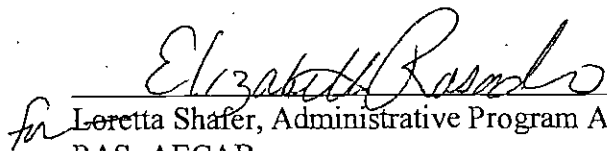
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Ray Pilapil
Manager
Bureau of Air, Compliance and Enforcement Section
Illinois Environmental Protection Agency
P.O. Box 19506
Springfield, Illinois 62794

On the 3 day of April 2013.


for Loretta Shafer, Administrative Program Assistant
PAS, AECAB

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7674 1408